



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 10, 2003

Lt. Wyman Hopkins
2120 Fourth Street
Rosenberg, Texas 77471

OR2003-0215

Dear Lt. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174848.

The Rosenberg Police Department (the "department") received a request for incident report number 02-33425. You state that you have released some information to the requestor but claim that other portions of the requested information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming these subsections must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that "[t]he respective case (Rosenberg Police case number 02-33425) is an open and active investigation." However, the report clearly states that "[t]his case is *closed* exceptionally." (Emphasis added.) Because the submitted information conflicts with your representations and you have not explained this contradiction or otherwise demonstrated how release of this report would interfere with the detection, investigation, or prosecution of crime, we find that you have not demonstrated the applicability of subsection 552.108(a)(1).

You contend that some of the submitted information is excepted under section 552.130. This section excepts from disclosure information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" as well as information relating to "a motor vehicle title or registration issued by an agency." The exception in section 552.130 is based on privacy principles. Therefore, the requestor is entitled to

information relating to the vehicle at issue because he owns it. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person, or person's representative, to whom information relates on grounds that information is considered confidential by privacy principles). However, the report also contains the Texas driver's license number of another individual. We have marked the information that the department must withhold pursuant to section 552.130.

We note that the offense report also contains a social security number. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that it did not obtain or maintain them pursuant to any provision of law enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, the requestor has a special right of access to his own social security number. *See* Gov't Code § 552.023(b).

In summary, the department must withhold the marked driver's license number pursuant to section 552.130. Social security numbers must be released unless obtained or maintained pursuant to a law enacted on or after October 1, 1990; however, the requestor has a special right of access to his own social security number. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

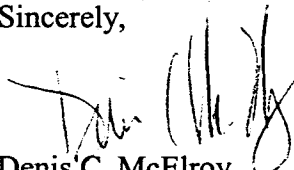
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 174848

Enc. Submitted documents

c: Mr. Kenneth Shavers
1305 Damon
Rosenberg, Texas 77471
(w/o enclosures)